

IV. RESALE REQUIREMENTS MUST BE EXTENDED TO ALL CMRS PROVIDERS.

The Notice also requests comment on the resale rules that should apply to CMRS providers. Notice at ¶¶ 137-143. LDDS firmly believes that strong requirements regarding resale of wireless service are a crucial complement to wireless equal access rules. The obligation to permit unlimited resale is a fundamental duty of a common carrier. The public would be harmed by any action that had the effect of excusing wireless firms from that obligation.

The Commission is well-acquainted with the benefits of unlimited resale in the wireline market. The ability to resell the service offered by a facilities-based carrier lowers barriers to entry by new providers and protects against discrimination. Resale similarly can play a critical role in increasing competition in wireless markets. Moreover, even assuming that meaningful facilities-based competition develops for wireless services, resale will still be necessary to ensure that all service providers can offer full-service packages.

The Commission has recognized the importance of resale in the cellular market. As a condition of their licenses, the Commission has required facilities-based cellular providers to permit resale of their services, with only one exception: a carrier need not allow resale by its facilities-based competitor after that entity's five-year build-out period has expired. ^{32/} Cellular providers are prohibited from discriminating against resellers in the terms and conditions of

^{32/} Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 FCC Rcd 4006 (1992).

service. ^{33/} Thus, any bulk discount offered by a carrier to its retail customers must also be made available to resellers. Id.

LDDS strongly urges the Commission to extend these basic resale requirements to other CMRS providers. Indeed, we submit that such a result is mandated by Title II. Resale restrictions would be unreasonable practices and result in unreasonable discrimination, no less in this market than in other carrier service segments. Just as in the cellular market, resale of other CMRS providers can encourage new entrants and enhance competition. In addition, consistent resale rules for CMRS are necessary for purposes of regulatory parity.

However, we note that simply requiring CMRS licensees to permit unlimited resale may not be sufficient to ensure that resellers have a realistic ability to compete. For example, the CPUC has found that in California, "resellers' market share has on the average declined to half of its level five years ago." ^{34/} The CPUC determined that:

Resellers' loss of market share is caused by several factors, including their inability to control the majority of their costs which are determined by the duopolists who control the bottleneck facilities. By keeping wholesale rates high, the duopolists make it more difficult for resellers to earn a sufficient margin to compete for business with the duopolists. Id.

The Commission should monitor the development of CMRS resale on an ongoing basis to determine whether facilities-based carriers are effectively blocking resale competition. If it appears that CMRS licensees are acting anti-competitively, additional Commission action will be required.

^{33/} 47 C.F.R § 22.914.

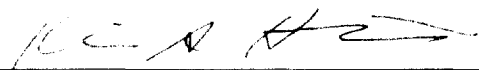
^{34/} CPUC Mobile Investigation at 26.

CONCLUSION

LDDS urges the Commission to act expeditiously to impose equal access requirements on CMRS providers, thereby extending the substantial benefits of equal access to the growing number of users who rely on mobile services. This action is fundamental to the continuing evolution of the nation's telecommunications infrastructure.

Respectfully submitted,

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September 12, 1994

CERTIFICATE OF SERVICE

I, Patricia A. Green, do hereby certify that a copy of the foregoing
"Comments of LDDS Communications, Inc." was served by hand, on this 12th day of
September, 1994, on the following:

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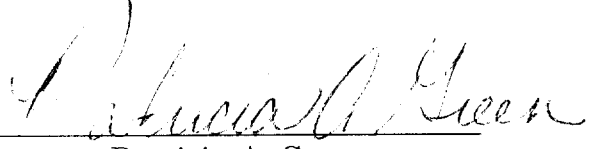
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